

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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BILL DRAFT 2011-SVxz-13 [v.7] (03/05)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Revenue Laws Tech., Clarifying, & Admin Chngs.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES
TO THE TAX AND RELATED LAWS.

The General Assembly of North Carolina enacts:

INCOME AND FRANCHISE TAX CHANGES

SECTION 1. G.S. 105-120.2(c) reads as rewritten:

"(c) For purposes of this section, a "holding company" is a corporation that ~~receives~~
satisfies at least one of the following conditions:

(1) It has no assets other than ownership interests in corporations in which it
owns directly or indirectly more than fifty percent (50%) of the outstanding
voting stock or voting capital interests.

(2) It receives during its taxable year more than eighty percent (80%) of its
gross income from corporations in which it owns directly or indirectly more
than fifty percent (50%) of the outstanding voting stock or voting capital
interests."

SECTION 2. G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining
State net income:

...

(14) The amount by which the basis of a depreciable asset is required to be
reduced under the Code for federal tax purposes because of a tax credit
allowed against the corporation's federal income tax ~~liability~~ liability or
because of a grant allowed under section 1603 of the American Recovery
and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be
claimed only in the year in which the Code requires that the asset's basis be
reduced. In computing gain or loss on the asset's disposition, this deduction
shall be considered as depreciation.

..."

SECTION 3.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2011,~~
January 1, 2012, including any provisions enacted as of that date that
become effective either before or after that date."



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1 **SECTION 3.(b)** This section is effective when it becomes law. Notwithstanding
2 subsection (a) of this section, any amendments to the Internal Revenue Code enacted after
3 January 1, 2011, that increase North Carolina taxable income for the 2011 taxable year become
4 effective for taxable years beginning on or after January 1, 2012.

5
6 **SALES TAX CHANGES**

7 **SECTION 4.** G.S. 105-164.3 reads as rewritten:

8 **"§ 105-164.3. Definitions.**

9 The following definitions apply in this Article:

10 ...

11 (25a) Over-the-counter drug. – A drug that can be dispensed under federal law
12 without a prescription and is required by 21 C.F.R. § 201.66 to have a label
13 containing a "Drug Facts" panel ~~and~~ or a statement of its active ingredients.

14 ...

15 (36) Sale or selling. – The transfer for consideration of ~~title~~ title, license to use or
16 consume, or possession of tangible personal property or digital property or
17 the performance for consideration of a service. The transfer or performance
18 may be conditional or in any manner or by any means. The term includes the
19 following:

- 20 a. Fabrication of tangible personal property for consumers by persons
21 engaged in business who furnish either directly or indirectly the
22 materials used in the fabrication work.
23 b. Furnishing or preparing tangible personal property consumed on the
24 premises of the person furnishing or preparing the property or
25 consumed at the place at which the property is furnished or prepared.
26 c. A transaction in which the possession of the property is transferred
27 but the seller retains title or security for the payment of the
28 consideration.
29 d. A lease or rental.
30 e. Transfer of a digital code.

31 ...

32 (45a) Streamlined Agreement. – The Streamlined Sales and Use Tax Agreement as
33 amended as of ~~May 12, 2009.~~ December 19, 2011.

34 ..."

35 **SECTION 5.** G.S. 105-164.4B(a) reads as rewritten:

36 "(a) General Principles. – The following principles apply in determining where to source
37 the sale of a product. These principles apply regardless of the nature of the ~~product.~~ product
38 except as otherwise noted in this section:

- 39 (1) Over-the-counter. – When a purchaser receives a product at a business
40 location of the seller, the sale is sourced to that business location.
41 (2) Delivery to specified address. – When a purchaser or purchaser's donee
42 receives a product at a location specified by the purchaser and the location is
43 not a business location of the seller, the sale is sourced to the location where
44 the purchaser or the purchaser's donee receives the product.
45 ~~(3) Delivery address unknown. – When a seller of a product does not know the~~
46 ~~address where a product is received, the sale is sourced to the first address or~~
47 ~~location listed in this subdivision that is known to the seller:~~
48 ~~a. The business or home address of the purchaser.~~
49 ~~b. The billing address of the purchaser or, if the product is prepaid~~
50 ~~wireless calling service, the location associated with the mobile~~
51 ~~telephone number.~~

e. ~~The address from which tangible personal property was shipped or from which a service was provided.~~

(4) When subsections (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(5) When subsections (1), (2) and (4) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subsections (1), (2), (4), and (5) do not apply, including the circumstance in which the seller is without sufficient information to apply the rules, the location will be determined based on the following:

a. Address from which tangible personal property was shipped,

b. Address from which the digital good or the computer software delivered electronically was first available for transmission by the seller or,

c. Address from which the service was provided."

SECTION 6. G.S. 105-164.7 reads as rewritten:

"§ 105-164.7. Retailer to collect sales tax from purchaser as trustee for State.

The sales tax imposed by this Article is intended to be passed on to the purchaser of a taxable item and borne by the purchaser instead of by the retailer. A retailer must collect the tax due on an item when the item is sold at retail. The tax is a debt from the purchaser to the retailer until paid and is recoverable at law by the retailer in the same manner as other debts. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser of a taxable item. The tax must be stated and charged separately on the invoices or other documents of the retailer given to the purchaser except for vending machine sales. Where the sales price of a product includes the tax, a retailer must clearly display a statement indicating such."

SECTION 7.(a) Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding the following new section:

"§ 105-164.12C. Items given away by merchants.

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purpose of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property."

SECTION 7.(b) This section is effective August 7, 2009.

SECTION 8. G.S. 105-164.13 reads as rewritten:

"§ 105-164.13. Retail sales and use tax.

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(49) Installation charges when the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

(49a) Delivery charges for delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the ~~purchaser-purchaser~~ at the time of sale.

..."

SECTION 9. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. – An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on the purchase in this State of railway cars and locomotives, and fuel, lubricants, repair parts, and accessories for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- (1) A list identifying the railway cars, locomotives, fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.
- (2) The purchase price of the items listed in subdivision (1) of this subsection.
- (3) The sales and use taxes paid in this State on the listed items.
- (4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period. Airplane miles are not in this State if the airplane does not depart or land in this State.
- (5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated ~~them~~ all motor vehicles, railroad cars, locomotives, and airplanes both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

SECTION 10. G.S. 105-468 reads as rewritten:

"§ 105-468. Scope of use tax.

The use tax authorized by this Article is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold in the taxing county but is used, consumed, or stored for use or consumption in the taxing county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall collect the one percent (1%) use tax when the property is to be used, consumed, or stored in the taxing county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to tangible personal property by the ~~purchaser, either purchaser~~ in another taxing county within the State, or where a local sales

or use tax was due and has been paid in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

GENERAL ADMINISTRATION CHANGES

SECTION 11. G.S. 105-263(a) reads as rewritten:

"(a) Mailed Document. —~~Section Sections~~ 7502 and 7503 of the Code ~~governs govern~~ when a return, report, payment, or any other document that is mailed to the Department is timely filed."

OTHER CHANGES

SECTION 12.(a) G.S. 105-113.107(1a) reads as rewritten:

"(1a) At the rate of three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this ~~section-section~~, or synthetic cannabinoids."

SECTION 12.(b) This section is effective June 1, 2011.

SECTION 13. The catchline of G.S. 105-187.70, as enacted by Section 6 of S.L. 2011-122, reads as rewritten:

"§ **105-187.70.** Department comply with Article **43** of Chapter **62A** of the General Statutes."

SECTION 14. G.S. 105-277.1F(a)(1) reads as rewritten:

"(a) Scope. — This section applies to the following deferred tax programs:

- (1) ~~G.S. 105-275(12)f., real property held for future transfer to government unit for conservation purposes.~~ G.S. 105-275(12), real property owned by a nonprofit corporation held as a protected natural area."

SECTION 15. G.S. 143-59.1(a) reads as rewritten:

"(a) Ineligible Vendors. — The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

- (1) A vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. ~~The~~ Upon request, the Secretary of Revenue shall provide the Secretary of Administration ~~periodically with a list of vendors to which or another entity to which this Article applies verification whether this section applies-applies to a specific entity.~~
- (2) A vendor if the vendor or an affiliate of the vendor incorporates or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country."

SECTION 16. G.S. 160A-536(e)(2) reads as rewritten:

- "(2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a

municipal service district for the purpose of paying the costs related to converting private residential streets to public streets. The executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city, notwithstanding the provisions of either the North Carolina Planned Community Act in Chapter 47F of the General Statutes, Statutes or the North Carolina Condominium Act in Chapter 47C of the General Statutes, or related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds."

SECTION 17. Effective when it becomes law, but expiring at the same time as Section 1 of S.L. 2011-296 expires (currently July 1, 2013), G.S. 161-10(a), as rewritten by S.L. 2011-296, reads as rewritten:

"§ 161-10. Uniform fees of registers of deeds.

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

- (1) Instruments in General. – For registering or filing any instrument for which no other provision is made by this section, the fee shall be twenty-six dollars (\$26.00) for the first 15 pages plus four dollars (\$4.00) for each additional page or fraction thereof.

~~When a subsequent instrument, as defined in G.S. 161-14.1(a)(3), is presented for registration with reference to more than one original instrument for which recording data are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional twenty-five dollars (\$25.00) for each additional reference. For any instrument that assigns more than one security instrument as defined in G.S. 45-36.4(18) by reference to previously recorded instrument recording data that are required to be indexed pursuant to G.S. 161-14.1(b), the fee shall be an additional ten dollars (\$10.00) for each additional reference.~~

When a document is presented for registration that consists of multiple instruments, the fee shall be an additional ten dollars (\$10.00) for each additional instrument. A document consists of multiple instruments when it contains two or more instruments with different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.

...."

SPECIAL LICENSE PLATE CHANGES

SECTION 18.(a) G.S. 20-63 reads as rewritten:

"(b1) **(Effective until July 1, 2016)** The following special registration plates do not have to be a "First in Flight" plate as provided in subsection (b) of this section. The design of the plates that are not "First in Flight" plates must be approved by the Division and the State Highway Patrol for clarity and ease of identification. When the Division registers a vehicle or renews the registration of a vehicle on or after July 1, 2015, the Division must send the owner a replacement special license plate in a standardized format in accordance with subsection (b) of this section and G.S. 20-79.4(a3).

- (1) Friends of the Great Smoky Mountains National Park.
- (2) Rocky Mountain Elk Foundation.
- (3) Blue Ridge Parkway Foundation.
- (4) Friends of the Appalachian Trail.
- (5) NC Coastal Federation.

- (6) In God We Trust.
- (7) Stock Car Racing Theme.
- (8) Buddy Pelletier Surfing Foundation.
- (9) Guilford Battleground Company.
- (10) National Wild Turkey Federation.
- (11) North Carolina Aquarium Society.
- (12) First in Forestry.
- (13) North Carolina Wildlife Habitat Foundation.
- (14) NC Trout Unlimited.
- (15) Ducks Unlimited.
- (16) Lung Cancer Research.
- (17) NC State Parks.
- (18) Support Our Troops.
- (19) US Equine Rescue League.
- (20) Fox Hunting.
- (21) Back Country Horsemen of North Carolina.
- (22) Hospice Care.
- (23) Home Care and Hospice.
- (24) NC Tennis Foundation.
- (25) AIDS Awareness.
- (26) Donate Life.
- (27) Farmland Preservation.
- (28) Travel and Tourism.
- (29) Battle of Kings Mountain.
- (30) NC Civil War.
- (31) North Carolina Zoological Society.
- (32) United States Service Academy.
- (33) Carolina Raptor Center.
- (34) Carolinas Credit Union Foundation.
- (35) North Carolina State Flag.
- (36) NC Mining.
- (37) Coastal Land Trust.
- (38) ARTS NC.
- (39) Choose Life.
- (40) North Carolina Green Industry Council.
- (41) NC Horse Council.
- (42) Core Sound Waterfowl Museum and Heritage Center.
- (43) Mountains-to-Sea Trail, Inc."

SECTION 18.(b) G.S. 20-79.7(a) reads as rewritten:

"§ 20-79.7. Fees for special registration plates and distribution of the fees.

(a) Fees. – Upon request, the Division shall provide and issue free of charge a single Legion of Valor, 100% Disabled Veteran, and Ex-Prisoner of War registration plate to a recipient of a Legion of Valor award, a 100% disabled veteran, and an ex-prisoner of war each year. The preceding special registration plates are subject to the regular motor vehicle registration fees in G.S. 20-88, if the registered weight of the vehicle is greater than 6,000 pounds. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
American Red Cross	\$30.00
Animal Lovers	\$30.00
Arthritis Foundation	\$30.00

1	ARTS NC	\$30.00
2	Back Country Horsemen of NC	\$30.00
3	Boy Scouts of America	\$30.00
4	Brenner Children's Hospital	\$30.00
5	Carolina Raptor Center	\$30.00
6	Carolinas Credit Union Foundation	\$30.00
7	Carolinas Golf Association	\$30.00
8	Coastal Conservation Association	\$30.00
9	Coastal Land Trust	\$30.00
10	Crystal Coast	\$30.00
11	Daniel Stowe Botanical Garden	\$30.00
12	El Pueblo	\$30.00
13	Farmland Preservation	\$30.00
14	First in Forestry	\$30.00
15	Girl Scouts	\$30.00
16	Greensboro Symphony Guild	\$30.00
17	Historical Attraction	\$30.00
18	Home Care and Hospice	\$30.00
19	Home of American Golf	\$30.00
20	HOMES4NC	\$30.00
21	Hospice Care	\$30.00
22	In God We Trust	\$30.00
23	Maggie Valley Trout Festival	\$30.00
24	<u>Morgan Horse Club</u>	<u>\$30.00</u>
25	Mountains-to-Sea Trail	\$30.00
26	NC Civil War	\$30.00
27	NC Coastal Federation	\$30.00
28	NC Veterinary Medical Association	\$30.00
29	National Kidney Foundation	\$30.00
30	North Carolina 4-H Development Fund	\$30.00
31	North Carolina Emergency Management Association	\$30.00
32	North Carolina Green Industry Council	\$30.00
33	North Carolina Libraries	\$30.00
34	Outer Banks Preservation Association	\$30.00
35	Pamlico-Tar River Foundation	\$30.00
36	P.E.O. Sisterhood	\$30.00
37	Personalized	\$30.00
38	Retired Legislator	\$30.00
39	Ronald McDonald House	\$30.00
40	Share the Road	\$30.00
41	S.T.A.R.	\$30.00
42	State Attraction	\$30.00
43	Stock Car Racing Theme	\$30.00
44	Support NC Education	\$30.00
45	Support Our Troops	\$30.00
46	<u>Sustainable Fisheries</u>	<u>\$30.00</u>
47	Toastmasters Club	\$30.00
48	Topsail Island Shoreline Protection	\$30.00
49	Travel and Tourism	\$30.00
50	AIDS Awareness	\$25.00
51	Buffalo Soldiers	\$25.00

1	Choose Life	\$25.00
2	Collegiate Insignia	\$25.00
3	First in Turf	\$25.00
4	Goodness Grows	\$25.00
5	High School Insignia	\$25.00
6	Kids First	\$25.00
7	National Multiple Sclerosis Society	\$25.00
8	National Wild Turkey Federation	\$25.00
9	NC Agribusiness	\$25.00
10	NC Children's Promise	\$25.00
11	Nurses	\$25.00
12	Olympic Games	\$25.00
13	Rocky Mountain Elk Foundation	\$25.00
14	Special Olympics	\$25.00
15	Support Soccer	\$25.00
16	Surveyor Plate	\$25.00
17	The V Foundation for Cancer Research Division	\$25.00
18	University Health Systems of Eastern Carolina	\$25.00
19	Alpha Phi Alpha Fraternity	\$20.00
20	ALS Association, Jim "Catfish" Hunter Chapter	\$20.00
21	ARC of North Carolina	\$20.00
22	Audubon North Carolina	\$20.00
23	Autism Society of North Carolina	\$20.00
24	Battle of Kings Mountain	\$20.00
25	Be Active NC	\$20.00
26	Brain Injury Awareness	\$20.00
27	Breast Cancer Earlier Detection	\$20.00
28	Buddy Pelletier Surfing Foundation	\$20.00
29	Concerned Bikers Association/ABATE of North Carolina	\$20.00
30	Daughters of the American Revolution	\$20.00
31	Donate Life	\$20.00
32	Ducks Unlimited	\$20.00
33	Greyhound Friends of North Carolina	\$20.00
34	Guilford Battleground Company	\$20.00
35	Harley Owners' Group	\$20.00
36	Jaycees	\$20.00
37	Juvenile Diabetes Research Foundation	\$20.00
38	Kappa Alpha Order	\$20.00
39	Litter Prevention	\$20.00
40	March of Dimes	\$20.00
41	Morgan Horse Club	\$20.00
42	Native American	\$20.00
43	NC Fisheries Association	\$20.00
44	NC Horse Council	\$20.00
45	NC Mining	\$20.00
46	NC Tennis Foundation	\$20.00
47	NC Trout Unlimited	\$20.00
48	NC Victim Assistance	\$20.00
49	NC Wildlife Federation	\$20.00
50	NC Wildlife Habitat Foundation	\$20.00
51	NC Youth Soccer Association	\$20.00

1	North Carolina Master Gardener	\$20.00
2	Omega Psi Phi Fraternity	\$20.00
3	Phi Beta Sigma Fraternity	\$20.00
4	Piedmont Airlines	\$20.00
5	Prince Hall Mason	\$20.00
6	Save the Sea Turtles	\$20.00
7	Scenic Rivers	\$20.00
8	School Technology	\$20.00
9	SCUBA	\$20.00
10	Soil and Water Conservation	\$20.00
11	Special Forces Association	\$20.00
12	Support Public Schools	\$20.00
13	Sustainable Fisheries	\$20.00
14	US Equine Rescue League	\$20.00
15	USO of NC	\$20.00
16	Wildlife Resources	\$20.00
17	Zeta Phi Beta Sorority	\$20.00
18	Carolina Regional Volleyball Association	\$15.00
19	Carolina's Aviation Museum	\$15.00
20	Leukemia & Lymphoma Society	\$15.00
21	Lung Cancer Research	\$15.00
22	NC Beekeepers	\$15.00
23	Shag Dancing	\$15.00
24	Active Member of the National Guard	None
25	100% Disabled Veteran	None
26	Ex-Prisoner of War	None
27	Gold Star Lapel Button	None
28	Legion of Valor	None
29	Purple Heart Recipient	None
30	All Other Special Plates	\$10.00.

EFFECTIVE DATE

SECTION 19. Except as otherwise provided, this act is effective when it becomes law.